

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

CRAIG FRANKE, )  
                    )  
Petitioner,       )  
                    )  
vs.                )                  Case No. 4:06-CV-1054 CAS  
                    )  
JEREMIAH W. "JAY" NIXON, )  
                    )  
Respondent.       )

**ORDER**

This matter is before the Court upon the application of Craig Franke for a writ of habeas corpus. The Court, however, cannot review the substance of the instant petition at this time as petitioner has submitted neither the \$5 filing fee nor a form "Motion to Proceed In Forma Pauperis and Affidavit in Support -- Habeas Cases." Thus, the Court will give petitioner the opportunity to either pay the \$5 filing fee, see 28 U.S.C. § 1914, or request leave to proceed in forma paupers. See 28 U.S.C. § 1915; Local Rule 2.05(A).

Therefore,

**IT IS HEREBY ORDERED** that the Clerk of Court shall forward to petitioner a form "Motion to Proceed In Forma Pauperis and Affidavit in Support -- Habeas Cases."

**IT IS FURTHER ORDERED** that petitioner shall have thirty (30) days from the date of this order to either pay the statutory filing fee of \$5, or to submit a completed form "Motion to Proceed In Forma Pauperis and Affidavit in Support -- Habeas Cases."

**IT IS FURTHER ORDERED** that if petitioner fails to pay the filing fee or to submit the form motion and affidavit within thirty days, the Court will dismiss this action without prejudice. See Rule 41(b) of the Federal Rules of Civil Procedure.

**IT IS FURTHER ORDERED** that if petitioner submits the form motion and affidavit, or pays the filing fee within thirty days, the Clerk of Court shall cause this action to be resubmitted to the Court for review under 28 U.S.C. § 1915 or the Rules Governing Section 2254 Cases in the United States District Courts.

**IT IS FURTHER ORDER** that the Clerk shall docket this petition as Craig Franke v. Jeremiah W. "Jay" Nixon.<sup>1</sup>



CHARLES A. SHAW  
UNITED STATES DISTRICT JUDGE

Dated this 12th day of October, 2006.

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<sup>1</sup>Petitioner has named as respondent the Honorable Wesley Dalton, Associate Circuit Judge of Warren County, Missouri. The proper respondent when a petitioner is in jail due to the state action he is attacking is the state officer having custody of the applicant. See 28 U.S.C. § 2254, Rule 2(a). However, since filing his habeas petition, petitioner has been released from custody. Because petitioner challenges the state's prosecution of his criminal case, the attorney general would be the proper respondent in this case. The Court will substitute Jeremiah W. "Jay" Nixon as the respondent.